IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1872 OF 2003

Shri Vishnu Ganpat Taloskar,
since deceased through his heirs

1a. Smt.Babibai Vishnu Taloskar,
Age: 73 years,Occ.: Nil.
1b. Bhalchandra Vishnu Taloskar,
Age: 52 yrs, Occ.: Service.
1c. Vilas Vishnu Taloskar,
Age: 41 yrs., Occ.: Service.

All above residing at Taloskar
Chawl, Nehru Village, Mulund (W),
Mumbai.

1d. Smt.Sheetal Vasant Patil,
age 38 yrs., Occ.: Nil,
R/at Sector 15, Vashi.
Navi Mumbai.

1e. Smt.Sandhya Karunakar Patil,
Age: 39 yrs., Occ.: Nil.
R/at Virendra Niwas,
Kopar Khairne, Navi Mumbai. .... Appellants.

Versus.

The State of Maharashtra,
through the Secretary (Revenue
and Forest Department)
IV floor, Sachivalaya,
Mumbai 400 032. .... Respondent.

Shri R.S.Apte with Shri A.A.Garge for the Appellants.

Shri K.K.Tated, A.G.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 10th August, 2004.

ORAL JUDGMENT.

1. This appeal was heard finally at admission stage on 5th August, 2004, and is kept today for Judgment.

2. The Appellants are the original Plaintiffs. The Appellants filed a suit against the Respondents-State Government for declaration that they are the owners of the suit property i.e. City Survey No.637, Chalta Nos.29, 30, and 31 admeasuring 168 sq.yards situated at village Nahur, Mulund (West), Taluka Kurla, Mumbai Suburban District. A declaration was also prayed for that the order passed by the City Survey Officer in October 1997 declaring the suit property to be the property of the State Government is illegal. It is not in dispute that the suit filed by the Appellants was under sub-section (4) of section 20 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as "the said Code").

3. The Appellants placed reliance on the alleged document of sale dated 4th September 1959 executed by one Shankar Namaji Patil in favour of the predecessor of the Appellants. The Appellants claimed that the said document is a sale deed. The Appellants also relied upon a deed of confirmation allegedly executed in favour of their predecessor by the legal representatives of

Shankar Namaji Patil and it is contended that the said document is duly registered under the Indian Registration Act, 1908. The contention of the Appellants is that the finding recorded by the City Survey Officer that the suit land is vesting in the State Government is illegal and in fact the suit land was a private property originally held by Shankar Namaji Patil.

4. The suit was resisted by the Respondent-State Government by filing Written Statement. It is submitted that the predecessor of the Appellant Shankar Namaji Patil could not produce any evidence in City Survey enquiry to show that the land was not vesting in the State Government. The Respondent contended that the Appellants have no title in respect of the suit land in view of the order dated 28th October 1997 passed by the City Survey Officer.

5. The learned trial Judge dismissed the suit. The learned trial Judge, however, held that the suit filed by the Appellant was maintainable. The learned trial Judge came to the conclusion that the Appellants were claiming title on the basis of the document which is an unregistered document and therefore, no title can be claimed by the Appellants. The learned trial Judge also held that the document dated 4th May 1959 was not a sale

deed but it was an agreement for sale. The learned trial Judge held that as there was no registered sale deed executed in favour of the predecessor of the Appellants, they cannot claim title. The learned trial Judge also discarded the deed of confirmation dated 27th December 1996 on the ground that the same cannot amount to a conveyance or sale deed.

6. Shri Apte, the learned Counsel appearing for the Appellants invited my attention to paragraph No.18 of the impugned judgment. He pointed out that Shankar Namaji Patil sold various other properties in the same village to various purchasers and in the city survey enquiry the title of the said purchasers claiming through Shankar Namaji Patil was accepted. He submitted that the extracts of the property register card maintained by the City Survey Department were produced and the same are ignored by the learned trial Judge. He relied upon the deed of confirmation executed by the legal representatives of the said Shankar in favour of the predecessor of the Appellants. He submitted that the said deed of confirmation was admittedly a registered document and therefore, the said document will have to be treated as a conveyance. He submitted that assuming that the said document was not properly stamped, the provisions of section 34 of the Bombay Stamp Act, 1958 could have been invoked. He relied upon

Civil Application No.2742 of 2004 which is an application for additional evidence. By the said application permission is sought to produce copies of sale deeds executed in the year 1958 and 1959 by Shankar Namaji Patil in favour of Balkrishna Vinayak Deshpande and Saraswatibai Gajanan Randive respectively. The learned Counsel submitted that the certified copies of the said documents were not available when the evidence was recorded by the trial Court and therefore, the prayer of the Appellants deserves to be granted permitting the Appellants to rely upon the said documents by allowing production thereof. The learned Counsel for the Appellants submitted that the deed of confirmation was signed by the legal representatives of the deceased Shankar and as the same was registered, the said document will have to be read as conveyance in respect of the suit property. The learned Counsel therefore submitted that as the additional documentary evidence is available, interests of justice require that the suit should be remanded to the trial Court for fresh hearing.

7. Shri Tated, the learned A.G.P. appearing for the State Government submitted that the reliance was placed by the Appellants on an unregistered document which purports to be only an agreement for sale and therefore, in view of section 54 of the Transfer of Property Act,

1882, no right is created in favour of the Appellants on the basis of the said document. He submitted that the deed of confirmation which is sought to be relied upon is only a confirmation of execution of the earlier document and though it may be registered, it cannot be considered as sale deed as it is not duly stamped as a conveyance. He submitted that when the said Shankar Patil appeared before the concerned Officer in the City Survey enquiry, he could not produce any document of title. He also relied upon the fact that in the subsequent enquiry, the predecessor of the Appellants could not produce any document. He, therefore, submitted that the learned trial Judge was right when he dismissed the suit.

8. I have considered the rival submissions. The learned trial Judge has relied upon the order passed by the City Survey Officer at Exh.21. In the said order it is mentioned that in the enquiry held in the year 1963, Shri Shankar Patil could not produce any document of his ownership in the said enquiry. it is mentioned that in the subsequent enquiry, the predecessor of the Appellants produced only a document of the year 1959 executed in his favour by the said Shankar Patil. The City Survey Officer observed that as the suit land does not belong to said Shankar Patil the document of the year 1959 was irrelevant.

9. From the said order it appears that in the first enquiry was held in the year 1963 on the basis of which order dated 1st December 1963 was passed. The said Shankar Patil could not produce any document. In the year 1959 a writing was executed by the said Shankar Patil in favour of the predecessor of the Appellants. Obviously the said Shankar Patil was not interested in the suit land when the first enquiry was held. In the subsequent enquiry case of the predecessor of the Appellants is not considered only on the ground that the said Shankar Patil has not established his ownership in respect of the said land in the earlier enquiry.

10. The deed of confirmation relied upon by the Appellants appears to have been filed on record by the Appellants in the trial Court. In the evidence of Bhalchandra, who is Appellant No.1(b) he has referred to document dated 4th September 1959 as the sale deed. In the examination-in-chief, the deed of confirmation dated 27th December 1991 was marked as exhibit subject to keeping the issue of proof of the contents and execution open. The claim of the Appellants is that the deed of confirmation is executed by the legal representatives of the deceased Shankar Patil. The claim is that it is a registered document which itself records that the property is sold to the predecessor of the Appellants.

However, in the impugned Judgment, I find that the learned trial Judge has not at all considered the effect of the deed of confirmation. It was necessary for the learned trial Judge to consider whether the said deed of confirmation is duly proved and whether the same is duly registered. If the said document was found to be duly registered, the learned trial Judge ought to have considered whether the said document itself can be read as a conveyance or sale deed. However, the learned trial Judge has not recorded any finding in that regard.

11. In so far as the application for additional evidence filed by the Appellant is concerned, it appears that the said Shankar executed two separate conveyances in the year 1958 in favour of some other persons in respect of the adjoining properties from the same village and on the basis of the said documents, the names of the said purchasers have been entered in the property register card. A submission was made that the said documents are executed by the deceased Shankar prior to the city survey and therefore, the said documents establish that Shankar Patil was the owner of the large plot of land at village Nehur. A submission was also made that as the State Government has accepted title of the said two purchasers claiming through Shankar Patil, the case of the Appellant ought to have been considered.

12. As stated earlier two registered documents were not produced before the trial Court. Therefore, it is not possible to consider the submission made by the learned Counsel appearing for the Appellants as regards the effect of the said documents. However, if the said documents are admissible in evidence and if the execution and contents thereof are proved, it cannot be said that the documents are not relevant for deciding the issue of title.

13. There is material on record to show that the Appellants have been in possession of the suit land for considerably long time and a structure has been erected by the predecessor of the Appellants. Considering all these aspects when an application for additional evidence is filed before me, I find that one more opportunity deserves to be granted to the Appellants to lead further evidence in the matter for establishing their title. As pointed out earlier, before the City Survey Officer when the said Shankar Patil appeared he had lost interest in the property and when the predecessor of the Appellants appeared before the City Survey Officer his case was not considered on the ground that it was not established by the said Shankar Patil that he was the owner. Therefore, in my opinion, the interests of justice require that the impugned Judgment

and Decree should be set aside and the Appellants should be permitted to lead further evidence in the matter.

14. The Appellants Nos.1(a), 1(b) and 1(c) have filed sworn undertaking stating therein that they are in possession of the suit land. It is pointed out that the Appellants Nos.1(d) and 1(e) are married daughters of the deceased Vishnu and they are residing with their respective husbands. It is stated in the Undertaking that the said Appellants will not part with the possession of the suit land and will not create any third party interest in respect of the suit land till the suit is finally decided. Today the undertaking of the Appellants Nos.1(d) and 1(e) is tendered on record in which it is stated that they will not alienate the suit land and will not create any third party interests.

The said undertakings are accepted.

15. In view of the above, the following order is passed:

(i) The impugned Judgment and Decree dated 31st July 2003 is quashed and set aside. L.C.Suit No.5295 of 1998 is remanded to the trial Court for fresh hearing.

(ii) The Appellants are at liberty to adduce

further documentary and oral evidence. It will be open for the Respondent-State Government to produce such further oral and documentary evidence as is required in the light of the evidence which may be adduced by the Appellants.

(iii) The parties are directed to appear before the learned trial Judge on 25th October 2004 for fixing the schedule of hearing.

(iv) All contentions of the parties on merits are kept open.

(v) The learned trial Judge is directed to decide the suit as expeditiously as possible and in any event on or before 31st October 2005.

(vi) No order as to costs.

(vii) The parties and the trial Court to act on authenticated copy of this order.

Judge.